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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Final report on the situation of human rights in Afghanistan submitted by Mr. Choong-Hyun Paik, Special Rapporteur, in accordance with Commission on Human Rights resolution 1995/74

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Introduction

1. A special rapporteur was first appointed to examine the human rights situation in Afghanistan in 1984 by the Chairman of the Commission on Human Rights, who had been requested to do so by the Economic and Social Council in its resolution 1984/37 of 24 May 1984. Since then, the mandate has been renewed regularly by resolutions of the Commission, endorsed by the Economic and Social Council, in which the Special Rapporteur was requested to submit reports to the Commission and to the General Assembly. The former are contained in documents E/CN.4/1985/21, E/CN.4/1986/24, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25, E/CN.4/1991/31, E/CN.4/1992/33, E/CN.4/1993/42, E/CN.4/1994/53 and E/CN.4/1995/64 and the latter in the annexes to documents A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669, A/45/664, A/46/606, A/47/656, A/48/584, A/49/650 and A/50/567.

2. At its fifty-first session, the Commission on Human Rights decided, by its resolution 1995/74 of 8 March 1995, to extend the mandate of the Special Rapporteur for one year, an extension which was approved by the Economic and Social Council in its decision 1995/285 of 25 July 1995.

3. At its fiftieth session, having taken note with appreciation of the report submitted to it by the Special Rapporteur, the General Assembly, by its resolution 50/128 of 22 December 1995, decided to keep under consideration at its fifty-first session the situation of human rights in Afghanistan, in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

4. Subsequent to the renewal of the mandate by the Commission on Human Rights at its fifty-first session, and in accordance with past practice, the newly appointed Special Rapporteur briefly visited the area in August 1995 in order to obtain a preliminary impression. He visited Pakistan on 25, 30 and 31 August 1995 and Afghanistan from 25 to 29 August 1995. In January 1996, he carried out a second visit, which included some areas which were not covered previously. He visited Afghanistan from 18 to 23 January 1996 and Pakistan from 15 to 17 January 1996 and on 24 January 1996.

5. Accordingly, the Special Rapporteur has the honour to submit his report to the Commission on Human Rights, which was finalized on 15 February 1996, in compliance with Commission on Human Rights resolution 1995/74. It is based on his brief interim report to the General Assembly, updated to include information on his second mission.

6. The new Special Rapporteur on the situation of human rights in Afghanistan, Mr. Choong-Hyun Paik, was appointed in April 1995. Following a visit to Geneva in May 1995 to attend the annual meeting of special rapporteurs, he proceeded to acquaint himself with the situation in Afghanistan and his first mission to Afghanistan was a brief one. He had envisaged that he would visit most parts of Afghanistan on this visit, i.e. the region administered by President Burhanuddin Rabbani including Kabul city and Herat. He also expected to visit Mazar-i-Sharif, the area in the northern region controlled by General Dostum, and Kandahar in the southern region, controlled by the Taliban militia. However, the outbreak of hostilities reportedly initiated by the Taliban prevented visits to Herat and

Kandahar. During the period when the Special Rapporteur was in the neighbouring region, he received reports of bombardments and fighting in the southern and western parts of Afghanistan.

7. Although visits to Kabul, Jalalabad and Mazar-i-Sharif took place as scheduled, in view of the foregoing, the Special Rapporteur was unable to acquaint himself with the situation as it exists in the south-western and some central parts of Afghanistan. To remedy this situation a second mission took place from 15 January to 25 January 1996; on that occasion, he was able to visit Kabul again, and thereafter he proceeded to Herat and Kandahar.

8. The Special Rapporteur wishes to express his sincere appreciation to the Governments of Afghanistan and Pakistan for extending their full cooperation during the course of the mission. He also wishes to thank the provincial authorities in Jalalabad, Mazar-i-Sharif and the Kandahar shura for the valuable assistance accorded to him when he visited those areas.

9. The Special Rapporteur wishes to thank the Office of the Secretary-General in Afghanistan and Pakistan (OSGAP) and the United Nations Office for the Coordination of Humanitarian Assistance (UNOCHA) for the most efficient logistical support, especially as plans had to be changed at very short notice after news of renewed fighting was received.

10. The Special Rapporteur also wishes to thank the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) for the kind assistance which they extended to him in the field.

I. BRIEF OUTLINE OF THE POLITICAL SITUATION

11. The mediation efforts by the United Nations to assist in arriving at a peace accord were once again resumed on behalf of the Secretary-General. The head of the United Nations Special Mission to Afghanistan, Ambassador Mahmoud Mestiri, held further meetings with President Rabbani in early January. Discussions continued and meetings were held with prominent Afghan leaders in order to find a negotiated solution to the crisis in the country. Amongst those with whom the Special Mission held talks were the British Foreign Secretary, Mr. Douglas Hurd, General Dostum, the Governor of Herat province, Mr. Ismail Khan, and representatives of the Taliban. The Special Mission continued to hold talks with prominent Afghans in Peshawar, Pakistan. As a result of intensive consultations on the peace efforts with all political parties and discussions with foreign representatives, it was announced by the Special Mission that under an agreement with all parties involved, a broadly based mechanism for the transfer of power was expected to be convened before 20 February 1995. This was to be followed by the establishment of a country-wide cease-fire. The Special Mission continued its efforts in Kabul to negotiate a peaceful transfer of power with the different political parties in Afghanistan, including the Taliban. Discussion continued during March 1995. On 20 March, Professor Abdul Sattar Sirat, together with Mr. Sultan Mohamed Ghazi and Mr. Abdul Ahmad Karzai, on behalf of the United Nations Special Mission, reiterated the previous announcement made on 12 March 1993 in Kabul. The announcement outlined the conclusions and agreements reached and included the following:

(a) A committee consisting of experienced Afghan military officers and commanders had been established with the responsibility of forming a national security force;

(b) Agreement was also reached with regard to the formation of a council or mechanism at the national level which would consist of two representatives from each province of Afghanistan. In addition, 15 to 20 independent personalities from inside and outside Afghanistan were to be nominated to this committee by the United Nations, in consultation with the concerned parties. The following procedure was to be adopted for that purpose: each province was required to form a council composed of ulemas, tribal leaders, former mujahideen and experienced political and administrative personalities who were residents of that province. This council would have the responsibility to choose the two representatives for the national council or mechanism. They were required to meet the following criteria: the individuals were to be Afghan Muslims who were residents of the province over the age of 25 years and have no criminal record. The provincial representatives elected in this manner would be presented to the United Nations Special Mission and its Afghan Working Group either directly or through the United Nations officers in Afghanistan.

12. On 29 June 1995, Sardar Abdul Wali Khan, the Special Envoy of Zahir Shah, the former King of Afghanistan, held discussions in Islamabad with Afghan personalities including representatives of various Afghan tribes and representatives of the Government of Pakistan. It was reported that he considered that a Loya Jirga (Grand Assembly) would be the only solution for Afghanistan and that the former King would agree to play his part in bringing peace to the country.

13. On 18 July 1995, the head of the United Nations Special Mission, Ambassador Mestiri, arrived in Islamabad to resume his efforts for a peaceful settlement in Afghanistan. He travelled first to Jalalabad where he had consultations with Governor Haji Abdul Qadir and members of the Supreme Coordination Council. From there, he proceeded to Kabul where, during a three-day stay, he held discussions with President Rabbani, Commander Ahmad Shah Masood and other Afghan personalities. He then proceeded to Kandahar where he met with the Taliban shura (local council). He also travelled to Herat to hold talks with Governor Ismail Khan and then on to Mazar-i-Sharif for discussions with General Dostum. Finally, he returned to Parachinar, a town on the border with the North-West Frontier Province of Pakistan, for a meeting with Mr. Gulbudin Hekmatyar, leader of Hezb-i-Islami of Afghanistan. He concluded his visit with discussions with the Prime Minister of Pakistan, Ms. Benazir Bhutto. Then he met with the Secretary-General of the Organization of the Islamic Conference (OIC) for further consultations. Ambassador Mestiri was encouraged by the positive and useful discussions which he held with the various Afghan leaders and the overwhelming desire for peace among the Afghan people.

14. The head of the Special Mission to Afghanistan resumed his peace-making efforts on 16 September 1995. Currently, the nine political parties which came into existence in order to oppose the Soviet-backed Government have been

replaced mainly by three groups, i.e. the Taliban, the forces controlled by General Dostum together with his supporters in the Supreme Coordination Council and the government forces of President Rabbani.

15. In pursuance of the instructions of the Secretary-General, he sought agreement between the major warring factions, as mentioned above, for a limited ceasefire followed by negotiations for transfer of power to a forum or mechanism which would represent the warring parties and others, with the possibility of supervision by international monitors. It was hoped that once the forum or mechanism was established, the ceasefire would be extended nationwide and would be on a long-term basis in order to facilitate the institution of an interim government which would deal with issues such as security and establishment of a neutral force and the demilitarization of Kabul.

16. With these objectives in mind, meetings were held between the Special Mission and President Rabbani, Commander Ahmad Shah Masood, General Rashid Dostum, the Taliban shura, Mr. Gulbuddin Hekmatyar, Governor Haj Gnadir, Pir Sayeed Ahmed Gailani, Ayatollah Assef Mohseini, prominent Afghans, and other personalities and concerned organizations.

17. Although President Rabbani expressed his willingness to accept an unconditional and nationwide ceasefire, his opponents, General Dostum and especially the Taliban, insisted that President Rabbani should step down from power before they agreed to the ceasefire and negotiations on the transfer of power. The compromise proposal that negotiations, the ceasefire and the transfer of power should be pursued concurrently was also not acceptable to all the parties.

18. On 6 November 1995, Mr. Rabbani announced publicly his willingness to transfer power to an individual or commission and proposed that the warring parties and other neutral personalities should discuss through the United Nations mediation and put forward a suitable mechanism and a suitable date for the transfer of power, with the pre-condition that all hostilities should cease and all forms of foreign interference should end. Mr. Rabbani submitted a tentative list of names representing all the provinces of Afghanistan which would reflect a regional, ethnic, religious and political balance for consideration by the other parties. The list was submitted to General Dostum, the Supreme Coordinating Council, the Taliban and the Eastern Zone shura. General Dostum added 10 more names to the list and several additional names were added, on behalf of the Afghan Shi'ite community. No formal response had been received from the Taliban at that time. Before the names added to the list could be discussed with Mr. Rabbani, hostilities broke out again in and around Kabul, and the head of the Mission was recalled by the Secretary-General. Rocketing and aerial bombardment in and around Kabul have continued since that time between the Taliban and the Government forces. When Mr. Rabbani proposed a cease-fire for the duration of the month of Ramadan, his offer was rejected by the Taliban and General Dostum.

19. Parallel to these initiatives, intermittent factional fighting has continued. However, the factional fighting seems to be concentrated only in certain areas bordering territories under the control of the different commanders including the area controlled by the authorities in Kabul.

According to information received especially from non-governmental organizations (NGOs) active in the rural areas, most of Afghanistan is peaceful.

The plight of the civilian population of Kabul

20. The Special Rapporteur was shocked by the desperate situation of the civilian population of Kabul. The resumption of civil war has affected many areas of Afghanistan but no part of the country has been as severely battered and targeted as Kabul. The innocent civilians of this city have come under repeated and almost continuous attacks and the short respite between the months of March and August 1995 has sadly come to an end. The access roads which bring goods essential for the survival of the civilian population of Kabul have been completely blocked by all the parties to the conflict. The people of Kabul are held hostage to the political aspirations of the warring factions of Afghanistan. Towards the end of January 1996, the essential supplies of medicines, fuel and food had practically run out, and only after many appeals at the international level and intense pressure was brought to bear on the parties concerned were the emergency air-lifts finally resumed on 3 February 1996 by the International Committee of the Red Cross; commercial convoys resumed deliveries on 1 February 1996 after the authorities in Kabul announced that the road to Maidan Shahr had been cleared of mines and explosive devices so that traffic could travel to Ghazni and Kandahar, subject to the Taliban's permission. As a result of this, food prices had dropped slightly, but were still about double the levels prevailing in December.

21. Emergency humanitarian aid provided by the various United Nations agencies and NGOs continues. The civilian population needs additional support and help, especially in view of the exceptionally bitter winter (temperatures often reach -20°C at night) and the steep fall in the value of the Afghan currency (which dropped to Af 9,200 to the dollar).

II. REBUILDING THE WAR-TORN SOCIETY OF AFGHANISTAN

22. Afghanistan has been confronted with a situation of strife and conflict for more than 16 years. Since the conflict began, nearly half of the population of the country have left their homes in search of safety either crossing the border into neighbouring Pakistan and the Islamic Republic of Iran or moving to another part of Afghanistan. It is estimated that more than 1 million people were killed in Afghanistan before the withdrawal of Soviet troops and the change of Government in April 1992. More than 25,000 persons are believed to have been killed in Kabul since April 1992 as a result of civil war between mujahideen armed groups affiliated with different political parties and factions.

23. Although a major part of Afghanistan is peaceful and there is a relative stability in the country not witnessed for many years, the more than 16 million people of Afghanistan are struggling to survive. Efforts by United Nations bodies and NGOs are directed towards strengthening the peace process and stability by providing an alternative to conflict by implementing plans and incentives for rehabilitation and reconstruction at the district level without waiting for a permanent solution.

24. It is undoubtedly a daunting task because the situation in terms of the needs of the country is grave. According to the Human Development Index, Afghanistan is the third poorest country in the world. Only a small minority of Afghans have access to safe water, sanitation, health care and education. More than one third of Afghan babies do not survive beyond the age of five. Afghanistan has the second highest infant mortality rate in the world at 164 per 1,000 live births.

25. The activities of UNDP are central to funding, coordinating rehabilitation and development. The "Action Plan for Immediate Rehabilitation" of October 1993 was a result of the joint effort of representatives of Government, United Nations agencies and the NGO community. It is considered to be the only comprehensive, jointly agreed statement of country-wide and sector-wide rehabilitation priorities. The five main programmes currently being funded by UNDP are in respect of animal health, rehabilitation of the disabled, rehabilitation of irrigation and flood control structures, urban rehabilitation programmes and crop production and improvement programmes.

26. Humanitarian aid to Afghanistan is coordinated by the United Nations Office for the Coordination of Humanitarian Assistance to Afghanistan (UNOCHA) and includes assistance for voluntary repatriation, emergency provision of shelter, water supply, food aid, sanitation, health care and mine clearance. Afghanistan is the most densely mined country in the world. It is estimated that the country has 10 per cent of the estimated 100 million mines laid in 64 countries of the world. The mine clearance programme is therefore of the utmost significance for the people of Afghanistan. In the latest consolidated inter-agency appeal for emergency humanitarian assistance for Afghanistan, UNOCHA estimates that at the planned implementation rate, it will take another four years to clear the remaining priority areas in Afghanistan. Over 10 square kilometres of priority areas in 16 provinces were cleared in the previous six-month period. Since the beginning of the programme in 1989, 45.1 square kilometres have been cleared and more than 9 square kilometres in 13 provinces were surveyed. Mine clearance training was provided to 1,457 students.

27. Voluntary repatriation, with the assistance of UNHCR, continues, especially to the areas which are not affected by the civil war. It is estimated by the Tripartite Repatriation Commissions (TRC) that 500,000 persons from the Islamic Republic of Iran and 200,000 from Pakistan would be returning to Afghanistan during the course of this year.

28. The peaceful climate which existed after about March 1995 in Afghanistan resulted in the return of refugees. According to information received, refugees had started to return to Kabul and other parts of Afghanistan.

29. However, hostilities began again in August 1995 when the Taliban movement made inroads beginning in Herat and onwards to the east, almost all the way up to Kabul, from where they had to retreat. Substantial parts of the country are now reported to be under the control of the Taliban.

30. The resumption of hostilities against Kabul city and the continuous shelling and rocketing of especially the southern part of the city have once

again provoked the departure of people (including former refugees) to seek refuge either elsewhere in the city or country, or in other parts of the world. The refugee population already outside the country is unable to return to Afghanistan, given the insecure and unstable situation which prevails.

31. UNHCR reports that during 1995 a total of 77,000 Afghan refugees receiving UNHCR repatriation packages returned from Pakistan and 92,000 from the Islamic Republic of Iran. A total of 76,000 refugees from Pakistan and 146,000 from Iran returned spontaneously, bringing the total number of repatriations for 1995 to 391,000 persons.

32. The World Food Programme (WFP) has provided food aid and an estimated 2 million people in Afghanistan have benefited under various projects including food-for-work activities. During 1995, the care and maintenance programme will be phased out from refugee camps in Pakistan in order to meet the increased needs for emergency assistance within Afghanistan.

33. Safe drinking water is available to less than one family in eight in the major cities. The majority of the Afghan population relies on traditional systems of water and sanitation and is therefore open to health risks from shallow water contaminated by accumulated waste. The United Nations Children's Fund (UNICEF) and the United Nations Centre for Human Settlements (Habitat) plan to continue with their programme designed to improve the water supply through installation of hand pumps on communal wells and chlorination of shallow wells. An improvement in this regard would have a direct result on the infant mortality rate since 42 per cent of all deaths of children under five are caused by diarrhoea and dehydration.

34. Most of the 70,000 wounded who were treated in hospitals in Kabul, Jalalabad and Mazar-i-Sharif in 1994 were women and children. The World Health Organization (WHO) together with UNICEF carried out intensive vaccination and other programmes to deal with malnutrition, provided medical supplies and set up clinics as well as educational and training programmes for women.

35. The total cost of the emergency humanitarian aid programmes of the United Nations described above was US$ 122 million for the period October 1994 to September 1995. As of 30 September US$ 94 million were available, leaving a shortfall of US$ 28 million.

36. The programmes of humanitarian assistance of the United Nations continue, together with those of a large number of NGOs active in such sectors as animal husbandry, education, health care and sanitation. Activities are carried out in both urban and rural areas and in areas subject to factional warfare, as well as in strife-free areas of the country.

III. VISITS TO AREAS OF AFGHANISTAN

A. Kabul

37. During his first mission in August 1995, the Special Rapporteur was received by the Deputy Foreign Minister, Mr. Ghafoorzai, and a very useful exchange of views took place. Many issues were raised and discussed. As a

result, a list of some 300 recently released prisoners of war was given to the Special Rapporteur. The released prisoners included 23 foreigners, 32 members of Hezb-i-Islami, 21 members of Wahdat, 94 supporters of General Dostum and 145 Taliban members.

38. Mr. Ghafoorzai expressed a strong commitment to all the human rights conventions to which Afghanistan is a party and invited the Special Rapporteur to feel free to travel everywhere and meet with anyone he wished to see. He stated that the authorities in Kabul attached great importance to the work and views of the United Nations Commission on Human Rights and said that it was their goal to strive for improvement of the situation in Afghanistan. However, 16 years of war had complicated the process of improvement. He urged the Special Rapporteur to investigate the root causes of the violations of human rights which took place while keeping in mind that there existed nine different factions in the country with conflicting viewpoints. In order for his Government to cooperate meaningfully it was necessary for the situation, beginning with the political situation, to improve. The will of the people was supreme and he hoped that a Loya Jirga (Grand National Assembly) would be installed within a year and that a constitution would be adopted by the people. He appealed for United Nations mediation in establishing a mechanism in pursuance of the will of the people. Referring to the situation of women in the Islamic tradition, the Deputy Minister stated that traditionally, the veil was accepted. However, he pointed out that there were 283 high-ranking women officers in the army and 18 women diplomats in the foreign service; furthermore, there were 2 female helicopter pilots. Referring to rights of minorities, he said that there had been a clear improvement and that many of those who had fled were returning and were able to reclaim their confiscated properties.

39. The Special Rapporteur stated that Afghanistan occupied an important place in the Central Asian region. However, any political disagreements could only be settled internally by the people of Afghanistan themselves. The Special Rapporteur was concerned only with the situation of the people of Afghanistan. Any violation of their human rights was of concern to him. He realized that the violations of the human rights of the people of Afghanistan were caused by extraneous factors. However, bombardment of civilians could never be acceptable or justified under any circumstances, no matter who the perpetrator was. The Deputy Minister reiterated that the reconstruction of Afghanistan would be a great struggle.

40. The Special Rapporteur noted that women and children were the primary victims in war situations and expressed the hope that the international community would assist the people of Afghanistan in their efforts to rebuild the country.

41. During the course of the second visit of the Special Rapporteur, he exchanged views with the Minister of Foreign Affairs as well as with other officials, including the Minister of Repatriation.

42. In August 1995 the Special Rapporteur had meetings with Lt. Gen. Suhila and Col. Razia at the military hospital in Kabul. During the discussions, Lt. Gen. Suhila said she had never encountered any difficulties in the course of her work and that she had over 1,000 men working under her. She informed

the Special Rapporteur that there were 90 women working at the hospital out of a workforce of about 400 persons. Many of the women were deans in the various faculties at the University of Kabul. Fifteen women had graduated this year from the medical faculty attached to the military hospital and at least half of the students were women. The interruption in women's education was caused by the heavy rocketing and bombardments of Kabul, causing all schools and universities to close. However, as a result of the peace and the calm which had prevailed during the year, schools and universities had reopened. There were separate schools for boys and girls but there was co-education at the university level. Women were able to take up jobs again and kindergartens had reopened in Kabul. The military hospital had a kindergarten for all employees providing care and food for the children of all the staff free of charge.

43. She also described facilities for training nurses at the Special Nursing Institute attached to the hospital, which was a teaching hospital. She stressed the importance of ending the war and said that the first priority was peace, without which no progress could be achieved.

44. The Special Rapporteur held meetings with members of the Ministry of Justice and other legal departments who explained the various policy-making and other legal structures. In addition, the Special Rapporteur was informed about the various schemes and methods which were set up to deal with the property rights of the returning refugees and the legal incentives to encourage refugees to return, including tax reductions and other efforts to assist those who had businesses abroad. A special decree regulated the recovery of properties of returning refugees.

45. Meetings were later held with officials dealing with repatriation in the Ministry of Repatriation. They explained their role and how efforts were coordinated in dealing with refugee problems through the two Tripartite Commissions established with the Islamic Republic of Iran and Pakistan. The Commissions met on a rotating basis in the three countries and the last meeting was held in July 1995 in Pakistan. The next meeting was scheduled to take place in the Islamic Republic of Iran in September. The Special Rapporteur was informed about difficulties faced regarding the repatriation of refugees from the Islamic Republic.

46. He also exchanged views and held discussions with the Attorney General, Mr. Mohamed Quasem, and five other officials. The Special Rapporteur was informed that Afghanistan was an Islamic State and regulated by the Islamic Shari'a. The following issues were discussed: the question of applicability of laws in different circumstances; the court and appeal systems and the international treaties which are binding on Afghanistan; the question of the legal rights of refugees regarding properties and businesses owned in the host country before return; and better protection of women and children. When the Special Rapporteur raised the issue of possible complaints regarding lack of due process of law, he was informed that a provision existed under the law which would "restore the dignity of wrongfully tried or convicted persons".

47. During a meeting with the First Vice-President of the National Security Department, Mr. Ali First, the Special Rapporteur was informed that violations of human rights in the form of abductions and torture did occur but they often took place in areas which were not yet under the control of the authorities in

Kabul. Steps were being taken to afford better protection against violations of human rights. The Special Rapporteur was informed that efforts by organizations like the International Committee of the Red Cross, Amnesty International and other NGOs received full support. The questions of drug trafficking and the growing of opium were discussed and it was stated that the authorities in Kabul were committed to a complete halt to and prevention of the cultivation of opium.

48. The question of the preservation of the cultural heritage of Afghanistan was also dealt with. There was an urgent need to renovate damaged works of arts and facades and to secure the return of looted articles from those who had obtained, through illegal means, what could be regarded as parts of the national heritage.

49. In a meeting with the President of the Supreme Court, Acting Chief Justice Murad, the system of civil and criminal actions was discussed. A legal aid system and the legal representation of children were among the topics discussed.

50. In further discussions regarding protection of rights, the officials from the President's office gave a detailed account of the different departments which dealt with questions concerning nationality, drafting of decrees and laws, complaints from aggrieved parties and appeals. The Special Rapporteur was informed that special attention was given to respect for human rights, notably freedom of expression: no censorship was imposed or permitted. The property rights of refugees were protected by a special decree supported by President Rabbani. Properties confiscated under previous regimes had been returned to the owners and restitution was given for violations of rights from which 40,000 to 50,000 families had benefited. A special commission was set up to estimate the damages. However, due to a shortage of funds only US$ 100 per family could be awarded to the families who were in greatest need.

51. The Special Rapporteur then met with returnee families. Among the interviewed were families who had left Afghanistan, families who were internally displaced and those who had previously lived in a suburb of Kabul which was destroyed by bombs and rockets. All those interviewed had suffered immensely from the death and abduction of family members, separation from and loss of contact with family members and a desperate financial situation which made day-to-day living precarious. In one case, a sick child could not be taken to the doctor as the mother had no money. A visit to one three-room apartment revealed that it was being used to house four families, each consisting of between six and nine people. The modest rent collected was set aside for payment to the owner on his eventual return, and leases were of very short term so that the returning owner would not have to wait for too long to gain vacant possession.

52. The Special Rapporteur witnessed the extent of destruction and devastation to which Kabul was subjected. In many cases, there is no possibility of restoring the damaged structures, the only solution being that of building ab initio.

53. According to information received during the first mission, there was a steady stream of returnees to Kabul. New businesses were reopening every week

and life was beginning to return to normal. The Special Rapporteur had meetings with several families who had returned recently and restored their homes which had been damaged during the wars. Schools were seen to be functioning again and returning schoolchildren included girls. However, the renewed fighting which commenced at the end of August 1995 had adversely affected the civilian population located especially in the southern and western parts of Kabul city.

54. In August 1995 the Special Rapporteur had the opportunity to meet with a mine clearance team who gave a detailed account of their activities. He noted that the training given before undertaking this difficult task was never total protection against the dangers attached to such work; a member of the team had sustained severe facial injuries that morning and was evacuated to the ICRC hospital for treatment. The Special Rapporteur was also briefed during the course of his second mission. According to information received, 27 out of the 29 provinces in Afghanistan are affected by land-mines, over an area of 488.9 km^2. Ninety per cent of the area affected by land-mines is agricultural and grazing land or near irrigation systems. There are between 20 and 25 victims daily who are injured by land-mines and 82 per cent of the victims are civilians.

55. The Special Rapporteur was briefed, during both his visits to Kabul by a large and distinguished group of lawyers belonging to the Lawyers Association of Afghanistan. The Special Rapporteur was informed of the various activities undertaken by the Association, which included free legal aid in cases regarding return of shops and houses to returnees, previous employment, disputes regarding pension rights, regaining loans and the rights of those convicted of criminal offences. The Association also dealt with the case of a Ukrainian woman who was married to an Afghan and who had left the country. Her property was sold and the proceeds were forwarded to her.

56. At a meeting with the representative of ICRC, the Special Rapporteur was able to gain an insight into the enormously important humanitarian work undertaken by the organization. The Special Rapporteur was informed that ICRC worked in an atmosphere of mutual trust and confidence.

B. Jalalabad

57. Dr. Amin-ul-Haq gave the Special Rapporteur a detailed account of how the shura operated in an atmosphere of peace, with representation from all the political parties. It was created soon after the Islamic Revolution took place. He stated that there were four high schools for girls and that the university had about 200 female students at the medical institute; there were also women doctors in the hospitals of Jalalabad. There were between 300,000 and 400,000 internally displaced persons in Jalalabad in five camps.

58. The Special Rapporteur exchanged views with the Deputy Governor of Nangarhar, Dr. Mohamed Asif, the Chancellor of Jalalabad University, Dr. Faizal Ahmed Ibrahimi and the President of Information and Culture, Maulawi Abdul Rashid. During the course of this meeting, there was an exchange of views and the Special Rapporteur was given a detailed picture of the situation of women. He was informed that about 20 per cent of the students in the Faculties of Agriculture and Engineering and half of those in

the Faculty of Medicine were women, because they were given equal access and opportunities in education. There was relative stability in the country but in the absence of a central authority, many difficulties persisted. During the course of the previous three and a half years the administration in the region had been independent. The repatriation of the internally displaced persons would be greatly accelerated and facilitated once the situation in the country became stable. He attributed the peaceful conditions in Jalalabad to the fact that there was a shura on which were represented members of all nine political parties. The shura took decisions on behalf of the people and strived for peace and neutrality without backing any particular political party.

59. The Special Rapporteur had an opportunity to visit a prison in Jalalabad and had a meeting with the superintendent of the prison. There were no political prisoners present. There was, however, a young boy who was obliged to stay with his father, who had been tried for murder and awaited sentencing, because there was no one to take care of him. The prison conditions were difficult, especially as no food was given to them (it was the responsibility of the relatives of the prisoners to bring food once a week; those who had no relatives had to petition the shura or rely on other inmates). Prisoners lived in collective cells and were given instruction in Islamic prayers. There was a great need for financial support and a strong plea was made by the superintendent to facilitate, among other things, vocational training programmes for the prisoners. A small number of beds had recently been provided by ICRC.

60. A visit was made to a displaced persons camp on the outskirts of Jalalabad. The inhabitants of the camp complained about the reduction in their rations and the imminent stoppage of all food rations. They were reluctant to go back to Kabul. They expressed a desire to remain where they were if they could obtain permanent employment.

C. Mazar-i-Sharif

61. During his visit to Mazar-i-Sharif, in the northern part of Afghanistan, which is under the control of General Dostum, a large gathering of lawyers, judges and other officials of the judicial system were present. Among them were three women judges. How the judicial system and the administration of justice functioned in the region was discussed. These were based on Shari'a as well as international standards and norms. Legal aid was available for the defence of those unable to retain a lawyer but no such case had yet arisen. Only prisoners who had committed criminal offences were in custody. Prisoners of war were usually not tried, but detained for a future exchange. Four cases of criminals apprehended for trafficking in narcotics were being investigated. The production of narcotics was prohibited in the area and no cases of trafficking in arms were reported.

62. The Special Rapporteur also met with the commander and other officials of the police garrison of Balkh province. He held discussions with officials of the National Security Department of the Northern Provinces. The question of trafficking in drugs and the methods used to reduce it were discussed. It was

pointed out that a lot of drugs could be produced from a small plot of land. Eighty kilograms of confiscated drugs were shown to the Special Rapporteur at the end of the meeting.

63. The situation of persons in camps was discussed. The Special Rapporteur was informed that 20 prisoners of war had recently been exchanged. Forty prisoners of war were left in Mazar-i-Sharif and about 250 in other areas.

64. According to information received from the President of Refugee Affairs of the Northern Provinces, Mr. Abdul Aziz Jalah, and the President of the Department of Education of the Northern Provinces, Haji Faizullah Ansari, there were three refugee camps in the area. One housed Tadjik refugees, another housed displaced persons from Kabul and the last one contained repatriates from the Islamic Republic of Iran. It was stated that refugees from the Islamic Republic were forcibly repatriated.

65. The refugees had been returning in a steady stream. There was a great need for assistance to the returnees who lacked a place to stay. They did not have access to clean water and no means to sustain themselves. They were often reduced to selling some of their meagre belongings. Five members of the committee of displaced persons from Kabul were able to meet the Special Rapporteur.

66. Only two primary schools were available to the refugees in this area. The teachers were refugees themselves and worked under the food-for-work schemes recently introduced. The only help the authorities of the northern provinces could give was in respect of curriculum and syllabus guidance.

67. A very useful meeting was also held with NGOs and human rights organizations active in the area. Their major concern was working towards a cease-fire and peace in the country. Although discussions centred around the question of human rights no specific cases of violations of human rights were raised.

D. Herat

68. The Special Rapporteur was unable to have any meetings with the Taliban shura during his visit to Herat, as it was the beginning of the holy month of Ramadan. Alternate dates proposed by the shura could not be accepted as by that time, the Special Rapporteur was scheduled to end his mission to the country. However, meetings held with the various United Nations agencies and non-governmental organizations proved very useful in gaining insights into the situation of the civilian population of Herat. Individuals with first-hand experience of violations of human rights were also interviewed.

69. According to information received, schools for girls were closed down in pursuance of instructions received from the representative of the Taliban shura. The Special Rapporteur was informed that primary schools were expected to open once the question of the role of women and their education was discussed. Moreover, the syllabuses of all schools were being scrutinized with the aim of converting them from the secular system to a religious one. It may be mentioned here that as the majority of schoolteachers in Herat, especially at the primary level, were women, the education of boys has also

been affected. The Special Rapporteur was further informed that Herati women were among the most educated and cultured in Afghanistan and that a limitation on access to education by women would not be readily accepted by the Heratis.

70. It was reported to the Special Rapporteur that since the Taliban took control of Herat, criminal activity, including abduction of young girls, rape and forced marriages of young girls with local commanders in the region, had ceased. On the other hand, women were obliged to observe purdah and were not allowed to go out unless accompanied by close male relatives. Widows with young children were adversely affected by these rules as they could not go out even to buy food for their children. It would appear that the situation of women had deteriorated seriously, as they could no longer work, and girls have had no access to schools since September 1995.

71. The Special Rapporteur visited Gazarge Transit Camp for refugees, which housed 173 families and approximately 1,000 persons at that time. The camp was a temporary stop where refugees, mainly from Iran, passed through and stayed for about a week before proceeding to their place of origin in Afghanistan. A total of 4,445 families, amounting to 22,657 persons, had passed through the camp. Many of those who returned had been living in Iran for 10 or 15 years. Some stated that they were ill-treated, their belongings were confiscated after which they were forced to return to Afghanistan.

E. Kandahar

72. The Special Rapporteur had consultations with Mullah Abbas, a representative of the Taliban shura in Kandahar. Prior to his arrival in Kandahar, the Special Rapporteur had been notified by the shura that his female assistant, an official of the United Nations Centre for Human Rights, would not be received by the shura. During the discussions, the Special Rapporteur reminded the representatives of the Taliban shura that Afghanistan was signatory to many international instruments and was signatory to the Convention on the Elimination of All Forms of Discrimination against Women. As a party to these international instruments, it was required of all Afghani authorities to uphold the standards as laid down, and that the Afghani authorities were answerable if those standards were not observed. The Special Rapporteur urged the authorities of the Taliban shura to discuss these questions with concerned parties in order to resolve these issues.

73. According to information received by the Special Rapporteur, all girls' schools in Kandahar have been closed since September 1995. As a majority of primary school teachers were women, even boys' schools were initially closed; however, they were reopened some time later with classes which had very large numbers of pupils. Women are required to be veiled when outside the home. They are prohibited from working and their freedom of movement is considerably restricted. Women are allowed to go out only when accompanied by a close male relative; this has created grave hardships for some women, especially, for example, widows with young children who do not have adult male relatives to chaperon them. The Special Rapporteur expressed his concerns regarding the situation of women to the representatives of the Taliban shura.

74. According to information received, the situation in respect of health-care services was an exception to the general rule. Twenty-five women

re in the process of receiving training as nurses under a programme whereby ey received 3½ kilogrammes of wheat a day instead of a stipend. Moreover, e women were of the opinion that they should be permitted to have jobs in der to supplement the family income and, in cases where the husbands were employed, to assume financial responsibility for the family. It was ported that the male members of the family would not prevent them from rking in the event that permission to work was granted by the Taliban thorities. The Special Rapporteur was informed that previously many women d worked in factories, as teachers, as civil servants in government offices, d as doctors and nurses.

. The Special Rapporteur was informed that the medical faculty which was arted for women only a few months previously was closed, after the Taliban sumed control because only men instructors were available to teach them. On e other hand, in the course of his discussions with various sources, the ecial Rapporteur was informed that the security situation in Kandahar had proved significantly and criminal activities had abated considerably, as far theft, security of women, armed robbery and looting were concerned. vilians were required to surrender their arms and confiscated properties had een returned to the lawful owners.

. The Special Rapporteur was informed that in Kandahar and Herat, UNICEF d suspended all its aid and assistance activities in areas where scriminatory practices against girls and women prevented them from having ccess to education. It was understood that UNICEF would resume its normal ctivities as soon as discrimination against girls and women was discontinued. some areas under the control of Taliban where no such discrimination is posed, UNICEF continues its normal assistance and aid programmes.

IV. PAKISTAN

A. Islamabad

. On his arrival in Islamabad, the various United Nations agencies gave a etailed briefing to the Special Rapporteur in respect of the current tuation of the civilian population in Afghanistan and the refugees in eshawar and elsewhere, including the humanitarian assistance that was being ven to them.

. During the course of both his missions, the Special Rapporteur had scussions in Islamabad with Sardar Khalid, Secretary of the Ministry of tates and Frontier Regions (SAFRON), as well as the Commissioner of Refugees Peshawar. He also had consultations with diplomatic representatives of me countries based in Islamabad and exchanged views regarding the situation refugees from Afghanistan currently in their respective countries.

. Information was received from a group of Afghan women in Islamabad during gust 1995. Violence against women, the status of women and the question of ducational facilities available to women in Afghanistan were some of the pics considered.

B. Peshawar

80. The Special Rapporteur had detailed discussions with members of the Writers Union for a Free Afghanistan, the Council for Understanding and National Unity of Afghanistan and the Cooperation Centre for Afghanistan. He had especially fruitful discussions with a member of the NGO umbrella organization ACBAR in respect of the protection of the archaeological treasures of Afghanistan.

81. The Special Rapporteur also had meetings with a group of highly qualified Afghan professional women who made a strong plea, through him, to the international community to intervene with firmness and persuade the warring factions of Afghanistan to resolve their political differences through a peaceful and negotiated settlement and to stop all hostilities immediately.

82. In the course of his second mission, in January 1996, the Special Rapporteur visited Nasir Bagh, a refugee camp in Peshawar, which had many recent arrivals. The Special Rapporteur first met with the elders and then the women. He was informed of the difficulties they faced and reference was made to the fact that aid from UNHCR and WFP had been drastically reduced. There were many very highly educated persons among the refugees who urged the Special Rapporteur to intervene on their behalf. During his first mission in August 1995, he had visited Kacha Garhi, the oldest refugee camp, when he met with the elders and chiefs of the camp.

83. During his first mission the Special Rapporteur had an opportunity to visit the Mother and Child Clinic run by Mrs. Fatana Gailani and her staff, who were all women. He was also able to get a perspective on the work being done by the NGOs under ACBAR.

84. A meeting with Afghan intellectuals was of great value for the Special Rapporteur. They described many violations and killings which had taken place in previous years. They also expressed their great desire to see peace restored to Afghanistan.

Violations of human rights

85. According to information received, after repeated threats to his life in early November, Mr. Abdul Hakim Katawazi, a respected member of the Afghan community and a member of the Council for Understanding and National Unity of Afghanistan, based in Peshawar, was shot dead as he was entering the offices of the Council. On 3 November 1995, an Afghan tribal leader, Wakil Wazir Mohammad, was reportedly shot dead in Hayatabad township, Peshawar. According to information received, two Afghan women, Dr. Naheed Azamat and her assistant, Ms. Raazia Shafaq, a nurse, who were running a private clinic at Jalozai refugee camp, were killed by four armed persons. Political motives have been attributed to all these assassinations.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Special concerns

86. At the time of finalizing the present report, girls were still deprived of the possibility of going to school and girls' schools had not yet opened.

87. It was reported to the Special Rapporteur that in a communication addressed to local non-governmental organizations as well as to the United Nations agencies involved in humanitarian assistance and educational and other programmes in Afghanistan, the Taliban authorities had asked that women not be employed.

88. According to information received, in October 1995, two persons in the province of Ghazni had their right hands and left feet amputated in public after being found guilty of theft by the Shari'a court of the Taliban.

89. Public executions of those convicted by the Taliban Shari'a courts have also been reported in Jalalabad and Khost. It is not clear to the Special Rapporteur whether due process of law according to the accepted norms of international law was guaranteed to the accused and whether the courts which heard their cases were presided over by persons who implemented the required standards, as laid down and accepted under international law. There was no uniform system of the judiciary and different parts of Afghanistan applied different systems of laws.

B. Conclusions

90. During his brief visits to Afghanistan and Pakistan, the Special Rapporteur held meetings and interviews with about 200 people ranging from political leaders, prominent intellectuals and families who were staying in refugee centres including those who had returned from the refugee camps administered by the Government of Pakistan. Based on the facts gathered and perceptions gained through such activities, the Special Rapporteur has been able to draw interim conclusions on the situation of human rights in Afghanistan.

91. The Special Rapporteur wishes to take note of the overwhelming aspiration for peace that is commonly held among the Afghan people and fully agrees with them and the political leaders that peace is essential for any plan of rehabilitation of Afghan society.

92. Despite sporadic disturbances, peace is gradually gaining ground in Kabul and other areas controlled by local authorities. In the Kabul area, some people were seen to have rebuilt their houses as part of an effort to reconstruct their war-torn society. The Special Rapporteur witnessed that the educational institutions have resumed their activities and students are returning to schools.

93. The Special Rapporteur wishes to record his particular appreciation of the activities of the United Nations bodies, e.g. UNDP, UNHCR, UNICEF, UNOCHA, WFP, WHO, and the various other organizations like ICRC, OXFAM, CARE AND ACBAR which are directed towards reinforcing indigenous initiatives to achieve

stability and improvement in living conditions. By providing the means and incentives for rehabilitation at the local level, these efforts contribute to forming social infrastructures that would facilitate the building of eventual peace.

94. However, the resumption of hostilities has once more jeopardized return to normalcy. Human suffering of considerable gravity persists in the form of murder, disappearances and infliction of conditions that cause physical destruction, thus depriving people of fundamental human rights such as the right to life, the right to be free from torture and the right to be free from cruel, inhuman or degrading treatment.

95. The presence of widely scattered land-mines, especially in residential areas, poses an imminent and grave danger to the right to life. Some returnees had been forced to go back to the refugee camps owing to fear of land-mines. International humanitarian rescue organizations have poured funds into medical treatment and rehabilitation therapy for those injured and disabled by land-mines.

96. Violations of the rules of war and disregard of international humanitarian norms including acts of cruelty perpetrated against civilians are a serious obstacle to the guarantee of the right to life and the right to be free from inhuman treatment.

97. The lack of a central Government poses extreme difficulty and complexity in redressing human rights violations as required by the rules of international law, especially so far as the authorities in Kabul are concerned. It is therefore necessary to stress the importance of accountability at the level of regional administrations, who must assume responsibility for violations of human rights committed in their particular regions.

98. The collapse of an impartial judicial system prevents the administration of justice, posing an insurmountable challenge to the right of the Afghan people to a fair trial and affecting, in particular, detainees in prisons.

99. The administration of justice remains largely at the discretion of local authorities through a system of indigenous regulation which has religious overtones. Private vengeance at the level of families and tribes is not rare and the situation has been exacerbated by the long armed conflict. It was brought to the knowledge of the Special Rapporteur that a convict from one of the camps for internally displaced persons was to be executed unless his brother, who committed manslaughter, could be captured.

100. Death sentences continue to be pronounced and a case of capital punishment was reported where the convict was publicly executed in accordance with Shari'a. The conditions to which prisoners and the convicted were subjected were also grave.

101. With regard to the rights of women, the Special Rapporteur witnessed a high level of female involvement, especially in the areas of medical care and education. However, despite the active involvement of women in the affairs of administration, partly resulting from wartime necessities, the development of

the situation as a whole does not seem to have greatly changed the pattern of deeply ingrained male domination of the indigenous societal system. In December 1994, the provincial council of Jalalabad prohibited women from working in offices except in the fields of health and education. Since September 1994 in certain parts of Afghanistan which are controlled by Taliban, women are forbidden to work except in the health sector.

102. In a situation in which there is deprivation of fundamental human rights, there is an urgent need to ensure the basic requirements of human existence. The result of the armed conflict that has lasted more than 16 years is devastating. The lack of resources indispensable for providing basic human needs such as safe water, food and sanitation is overwhelming.

103. In addition to the problem of malnutrition among children, including infants, the general disruption of health services country-wide decreases life expectancy on a formidable scale. Factors such as deprivation of education, limited meaningful human contact and easy access to sophisticated weapons, coupled with the experience of the cruelties of war, destroy the value system of many young people, resulting in a failure to discourage them from participating in violent activities.

104. As a result of the prevailing harsh environment, the cultural heritage of Afghan society is exposed to wanton destruction.

C. Recommendations

105. The Special Rapporteur is particularly concerned about the fact that violations of human rights in Afghanistan continue in many parts of the country. In order to discourage impunity, it is necessary to establish a mechanism with national jurisdiction which would punish the perpetrators of violations of human rights and compensate victims.

1. Peace-building

106. International efforts should be concentrated on accelerating the ongoing peace process with due regard to the right of the Afghan people to self-determination.

107. Before and during the course of achieving a solution for permanent peace, every effort should be made to curb violence and to diminish antagonism among competing factions and members of the general public from diverse tribal, religious, social and cultural backgrounds.

108. The compatibility of the right to religious belief and the preservation of peaceful living should be stressed.

2. Humanitarian assistance

109. It is generally assumed that the State that engenders refugees must be principally held responsible for redressing the consequences arising from its actions. Nevertheless, the refugee problem in Afghanistan has always been of

concern to the international community. It is of crucial importance that priority be given to increasing humanitarian assistance, supported by all nations.

110. The situation of returnees and of refugees should be dealt with as a whole. The returnees from refugee camps should be allowed to maintain their refugee status until they are able to live in security and enjoy a basic minimum standard of living in peaceful conditions. Returnees should be encouraged to participate in assisting refugees in decisions regarding their repatriation. Food, shelter and the minimum requirements for basic living should be provided immediately. Priority should be given to ensuring access to food and a safe environment, free from physical dangers. This requires continued implementing of the land-mines-clearance programme, providing medical treatment, and locating safe sources of water and purifying contaminated water.

111. In order to divert people from engaging in such delinquent activities as arms dealing, trafficking in narcotics and cultural artifacts or growing illicit crops, it is essential to provide them with alternatives which enable them to supply the basic requirements of their lives. This would render them less susceptible to external influences and manipulation.

3. Rebuilding of society

112. Just as voluntary repatriation should be encouraged, efforts to strengthen activities within Afghan society are also necessary to ensure non-recurrence of a mass exodus of refugees. In this sense, the UNDP projects under the programme "Action for Immediate Rehabilitation" of the Afghan social environment have been a positive contribution.

113. Maintaining an appropriate balance between initiatives of the Afghan people and those providing external assistance is necessary in designing any rehabilitation programme for Afghan society. The participation and collaboration of the Afghan people and their organizations, such as the Lawyers Association, shura-type local entities and other non-governmental groups, should be encouraged so as to reinforce their capacity to meet their own needs.

114. In view of the numerous entities involved in humanitarian activities in Afghanistan and the need to avoid duplication, the activities of the United Nations Office for the Coordination of Humanitarian Assistance (UNOCHA) should be encouraged and strengthened.

115. A coherent system of legal administration should be established with a view to redressing the utter disregard of humanitarian and human rights law and international human rights norms as mandated by the rules of international law and justice. In the long term, a form of human rights education should be widely provided to law enforcement personnel and the general public so as to nurture a human rights culture.

4. Protection of vulnerable populations

116. Priority should be given to protecting vulnerable segments of the population such as women, children and the aged from wartime cruelties. Every effort should be made to protect children, who are the future population of Afghan society, from everyday violence. The practice of drafting and recruiting children as paracombatants should be prohibited.

117. Worldwide assistance in providing medical care to mothers and infants should be mobilized in order to save the future generations of Afghan people.

118. Children should be provided with the education to which they are entitled. Teachers, textbooks and other educational materials and facilities are urgently needed.

119. Establishment of an international education and rescue fund for Afghan children should be considered.

5. Protection of cultural property

120. The cultural patrimony forms a central part of the identity of Afghanistan. The right of future generations of Afghans to enjoy their culture depends on due regard being given to the protection of the indigenous culture. Efforts should be made internationally to preserve and to protect the cultural patrimony of Afghanistan, which is their common heritage, and should include in particular Kabul museum, the minarets and the Jamia mosque in Herat. In this connection, the Special Rapporteur appeals to the international community to assist by discouraging further archaeological excavations of cultural properties by individuals and their illegal trafficking with foreign dealers. International cooperation in this regard among the neighbouring countries must be given the highest priority.